IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4540 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANORIA CHEMICALS AND IND. LTD.

Versus

STATE OF GUJARAT

Appearance:
MR PAVAN GODIAWALA FOR NANAVATI & NANAVATI
for Petitioners
MR SUDHIR MEHTA, AGP for Respondents

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.A.PUJ

Date of decision: 22/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI For the Court)

1. In this petition, Entry 94 of Schedule II of Part A of the Gujarat Sales Tax Act, 1970 as amended from time to time has been challenged as unconstitutional relying upon the decision of the Supreme Court in Synthetics & Chemicals Ltd. v. State of U.P., reported in (1990)1 SCC 109, in which it was held that, inclusion of alcohol industries in the list of scheduled industries in Industries (Development and Regulation) Act detracts from the power of States to impose any levy, and that, no sales tax was leviable in view of Ethyl Alcohol (Price Control) Orders. The petitioner relied upon the said decision in which it was also held that the States have no legislative competence to impose sales tax and additional sales tax on industrial alcohol, and claimed refund on that basis.

2. The decision of the Supreme Court in Synthetics & Chemicals Ltd. v. State of U.P., [(1990)1 SCC 109], came to be considered in a subsequent decision of the Supreme Court in State of U.P. v. Synthetics & Chemicals Ltd., reported in (1991)4 SCC 139, in which it was held that the Supreme Court in case of Synthetics & Chemicals Ltd. v. State of U.P., [(1990)1 SCC 109], has not, and could not have, intended to say that the Price Control Orders made by the Central Government under the Industries (Development and Regulation) Act impose a fetter on the legislative power of the State under Entry 54 of List II to levy taxes on the sale or purchase of goods. It was held the reference to sales tax in paragraph 86 of that judgement was merely accidental or per incuriam and has, therefore, no effect on the impugned levy. (See paragraph 36 of the judgement in State of U.P. v. Synthetics & Chemicals Ltd., [(1991)4 SCC 139].

3. A Division Bench of this Court in Guj-Chem Distilleries India Ltd. v. State of Gujarat, reported in 96 Sales tax Cases 37 has, relying upon the decision of the Supreme Court in State of U.P. v. Synthetics & Chemicals Ltd., reported in (1991)4 SCC 139, held that the States have full legislative competence to levy tax on the sale or purchase of industrial alcohol, under Entry 54 of List II of the Seventh Schedule to the Constitution. It will be seen that, in paragraph 12 of the memo of the present petition, there is a reference to Special Civil Application No. 951 of 1990 and Special Civil Application No. 1655 of 1990, which were at that time admitted and pending, and these are the very matters which have been decided in Guj-Chem Distilleries India Ltd. (supra) by a Division Bench of this Court, holding

that the States have full legislative competence to levy tax on the sale or purchase of industrial alcohol, and rejected the petitions.

4. In this view of the matter, there is no substance in the present petition and it is rejected following the decision of this Court in Guj-Chem Distilleries India Ltd. (supra). Rule is discharged with no order as to costs. Interim relief stands vacated.

FEBRUARY 22, 2002 [R.K.ABICHANDANI, J.]

[K.A.PUJ, J.]

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